STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Joseph C. Sun, PLAINTIFF, v. Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales, DEFENDANTS.	IN THE COURT OF COMMON PLEAS Civil Action No. 2014-CP-07-00943 **AMENDED ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter came before me on the motion of Defendants Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales ("the Defendants"), dated June 13, 2016, for summary judgment pursuant to Rule 56, SCRCP. Present at the hearing were Hillary G. Meyer and E. Mitchell Griffith, attorneys for the Defendants, and the Plaintiff, Joseph C. Sun, proceeding pro se. The Court ruled for the Defendants ("Order"). Thereafter, Plaintiff sought reconsideration of the Order. This Amended Order now replaces the original Order.

LEGAL STANDARD

"[A] motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010) (quoting Rule 56(c), SCRCP). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably

be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). Moreover, "although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one conclusion." Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006).

FACTS

The Plaintiff brought this action against the Town of Bluffton, the Bluffton Police Department and the individual defendants named above pursuant to the S.C. Tort Claims Act. § 15-78-10 *et. seq.* ("The Act"). These individuals are police officers and employees of the Town of Bluffton. As employees of the Town of Bluffton, they are subject to the Act. The Plaintiff's original complaint was filed on April 21, 2014 and served on the Defendants thereafter. The original complaint asserted false arrest/ false imprisonment, gross negligence, slander/ libel per se, assault/ personal injury, and civil conspiracy. The Defendants filed a timely answer asserting various defenses and specifically as an affirmative defense raised the statute of limitations. The Town of Bluffton and Bluffton Police Department were represented by separate counsel, and they moved the Court to dismiss the complaint as being outside of the statute of limitations and therefore untimely filed. On December 28, 2014, the Court entered an order dismissing the complaint against the town and the police department finding "the Plaintiff failed to file a verified claim, thus the two year statute applies" and "the incidents giving rise to the Plaintiff's cause of action all occurred outside of the two year period." Judge Dukes' Order filed December 10, 2014.

On April 28, 2015, the Plaintiff filed a motion to amend and add two causes of action, namely Malicious Prosecution and a 42 USC §1983 claim against Defendants Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales. Thereafter, on August 28, 2015, these Defendants filed a motion for Summary Judgment. Prior to the hearing on the motion for Summary Judgment, on October 8, 2015 the Court granted the Plaintiff's motion to amend which added the two new causes of action. However, the allegations of the first five (5) causes of action mirrored the original complaint. The Parties agreed that the two new causes of action were not subject to the pending motion for summary judgment because they had not been pled at the time of the filing of the motion.

On December 22, 2015, the Court entered an order dismissing the first five causes of action against the Defendants, namely false arrest/false imprisonment, gross negligence, slander/libel per se, assault/personal injury, and civil conspiracy, finding "the suit was brought after the applicable statute of limitations expired on these causes of action." Judge Keesley's Order filed December 28, 2015. The Court did not make any findings as to the two new causes of action. Accordingly, only two causes of action, Malicious Prosecution and a 42 USC §1983 claim, remained to be adjudicated against the Defendants.

In his Amended Complaint, the Plaintiff makes various allegations of fact against the individual defendants, complaining of incidents that allegedly occurred between the years 2009 to 2012. He asserts that the Defendants arrested him on numerous occasions with malice, without probable cause, and in violation of his civil rights, and that on each occasion,

the charges against the Plaintiff were eventually resolved in his favor. (Amd. Compl. ¶¶ 45 – 48). The incidents are as follows:

(1) The first incident complained of occurred in July 2009, whereby Officer Dickson allegedly wrongfully arrested the Plaintiff and wrongfully accused the Plaintiff of kidnapping. With this incident, the Plaintiff was placed under arrest, but he was never charged with kidnapping or any other offense. (Amd. Compl. ¶ 15).

(2) Then, in March 2010, the Plaintiff alleges that he was arrested twice by Defendant Norberg for attempting to contact his ex-wife regarding visitation with his child. (Amd. Compl. ¶¶ 20 – 21). The evidence presented at the hearing of the Defendant's motion showed that the Plaintiff was charged with harassment and with the unlawful use of a telephone. The evidence shows that these charges were dismissed on September 8, 2011 and June 5, 2012, respectively.

(3) Next, the Plaintiff alleges that on March 10, 2010 he was arrested by Defendants Babkiewicz and Tubbs without a warrant for possession of burglary tools and harassment. (Amd. Compl. ¶ 18). According to the documents presented by both parties, this charge was *nolle prossed* on October 14, 2013.

(4) Directly after this arrest, in March 2010, the Plaintiff alleges that Defendant Hebda used false reports to convince the magistrate judge to deny the Plaintiff's bail. (Amd. Compl. ¶ 19).

(5) Again, on March 17, 2010, the Plaintiff alleges that he was falsely arrested by Defendant Gonzales and charged with offenses such as stalking and possession of burglary tools. (Amd. Compl. ¶ 22). The record presented by both parties shows that these charges were *nolle prossed* on October 14, 2013.

(6) Finally, the Plaintiff alleges that in February 2012 Defendant Dickson filed a false police report against the Plaintiff alleging traffic violations following a motor vehicle collision. (Amd. Compl. ¶ 17). However, the record reflects that officers found both vehicles to be at fault for the motor vehicle accident, and neither party was cited for a violation.

DISCUSSION

I. The Plaintiff failed to institute either cause of action within the applicable statute of limitations; therefore, his claims fail as a matter of law.

A. The majority of the incidents in the Plaintiff's complaint fall outside the applicable statute of limitations period for malicious prosecution claims.

"Under the common law, the limitations period for a plaintiff's malicious prosecution claim commences when the proceedings brought against him are resolved in his favor." Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 390 (4th Cir. 2014), *cert. denied sub nom.* Baltimore City Police Dep't v. Owens, 135 S. Ct. 1893, 191 L. Ed. 2d 762 (2015). "Where an accused establishes that charges were *nolle prossed* for reasons which imply or are consistent with innocence, an action for malicious prosecution may be maintained." McKenney v. Jack Eckerd Co., 304 S.C. 21, 22, 402 S.E.2d 887, 887-88 (1991). Accordingly, a plaintiff's statute of limitations for a malicious prosecution claim begins to run on the date that the *nolle prosequi* is entered. Owens, 767 F. 3d at 390. South Carolina recognizes a two-

year statute of limitations for malicious prosecution claims brought against employees of the state, who fall within the provisions of the South Carolina Tort Claims Act. Loadholt v. Cribb, No. 2004-UP-238, 2004 WL 6251537, at *3 (S.C. Ct. App. Apr. 12, 2004) *citing to* Joubert v. S. Carolina Dep't of Soc. Servs., 341 S.C. 176, 183, 534 S.E.2d 1, 5 (Ct. App. 2000).[1]

The Plaintiff presents six (6) incidents occurring between the years 2009 to 2012, described at length above, four (4) of which are barred by the two-year statute of limitations. First, the Plaintiff alleges that in July of 2009 Defendant Dickson wrongfully arrested him and threatened to charge him with kidnapping. (Amd. Compl. ¶ 15). This incident occurred in 2009 and no formal charges were filed; therefore, the Plaintiff failed to meet the two-year statute of limitations. Next, in March of 2010 the Plaintiff alleges false arrest by Defendant Norberg, but the evidence shows that these charges were dismissed on September 8, 2011 by Order for Destruction of Arrest Records, signed by Beaufort Magistrate Judge Clifford Bush, III. (See "Order for Destruction of Arrest Records," signed Feb. 14, 2012; Exhibit A). Then, the Plaintiff alleges that in March 2010 Defendant Hebda asked the judge to deny the Plaintiff's bail (Amd. Compl. ¶ 19). This, too, falls outside the two year statute of limitations. Finally, the Plaintiff alleges that in February of 2012 Defendant Dickson filed a false accident report about the Plaintiff (Amd. Compl. ¶ 17), which is, again, outside of the two-year statute of limitations. The incidents that occurred on March 10, 2010 and March 17, 2010 that were *Nolle Prossed* on October 14, 2013 are not barred by two-year statute of

[1] It has already been established by Order of this Court that the Defendants are subject to the provisions of the Tort Claims Act. Judge Keesley's Order entered December 28, 2015. It has further been established that the Plaintiff failed to file a verified claim, thus the two year statute applies. Judge Dukes' Order entered December 10, 2014.

limitations. However, as explained below, the Defendants are entitled to summary judgment as to those two (2) incidents as well.

B. All of the incidents in the Plaintiff's complaint fall outside the applicable statute of limitations period for § 1983 claims.

There is no statute of limitations specified by 42 U.S.C. § 1983; therefore, the proper statute of limitations in a § 1983 claim is that of the forum state's statute of limitations for personal injury claims. Wilson v. Garcia, 471 U.S. 261, 276 (1985), *superseded by statute on other grounds* Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369 (2004); see also Nat'l Adver. Co. v. City of Raleigh, 947 F.2d 1158, 1161 (4th Cir.1991). In South Carolina, the statute of limitations for a personal injury claim is three years. S.C.Code Ann. § 15–3–530(5). "Actions must be commenced within three years after the plaintiff knew, or by the exercise of reasonable diligence should have known, that a cause of action existed." S.C.Code Ann. § 15–3–530. Therefore, for the Plaintiff to maintain an action under 42 U.S.C § 1983 for a violation of his federal rights against the Defendants, the Plaintiff must have brought the action three years after each offense complained of. The Plaintiff fails to meet the requisite three-year statute of limitations to bring a § 1983 claim as to all of the Defendants' alleged acts.

The Plaintiff's Amended Complaint adding a cause of action under § 1983 was filed on October 8, 2015. None of the events that the Plaintiff complains of in his pleadings happened within three years of October 8, 2015. In fact, the last of the alleged events happened in February of 2012. The Plaintiff was aware that an action under 42 U.S.C. § 1983 existed at the time that each of the events allegedly occurred because he claims that

under each set of facts he was wrongfully accused and/or arrested. However, the Plaintiff waited until October 8, 2015 to amend his complaint to include a § 1983 action against the Defendants. The Plaintiff had three years from the date of each incident to file a § 1983 action. The Plaintiff failed to do so, and the statute of limitations as to the § 1983 cause of action has run. Therefore, the § 1983 claim against the Defendants must be dismissed as a matter of law as barred by the applicable statute of limitations.

C. The Plaintiff's claims do not relate back to the filing date of the original complaint.

I find that the Plaintiff's claims under § 1983 and for malicious prosecution do not relate back to the date of his original filing, April 21, 2014. An amendment to a pleading relates back to the date of the original pleading "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings." Rule 15(c), SCRCP. But "the central requirement here is that the party defending against the new claim have sufficient notice of it, *i.e.,* 'the new claim must be 'logically related' to the *matters originally pleaded* so that the defendant is not prejudiced by the new claim asserted after the statute of limitations has expired.'" Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 222–23, 525 S.E.2d 888, 897 (Ct. App. 1999) (cited by Wright v. Am. Bankers Life Assur. Co. of Florida, 586 F. Supp. 2d 464, 469 (D.S.C. 2008)). "The factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the party defending against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in

support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back." Id.

The Plaintiff cannot relate his § 1983 and malicious prosecution claims back to his original complaint. The Defendants did not have notice of the new claims because the new claims are unrelated to the original allegations. The new § 1983 claim is based on an alleged violation of the Plaintiff's constitutional rights. None of the allegations of the Plaintiff's original complaint alleged any constitutional violations, and there was no indication whatsoever on April 21, 2014 that the Plaintiff had any intention of claiming a violation of his rights. Likewise, the new malicious prosecution claim relates to the Defendants' actions in prosecuting the Plaintiff, and in no way relates to the original actions. Further, the Plaintiff will rely on newly obtained and different evidence to prove both new claims. In the original actions, the Plaintiff had to establish that the Defendants acted negligently. The Plaintiff must now establish that the Defendants violated clearly established constitutional rights and maliciously instituted proceedings without probable cause. The Plaintiff, in his affidavit and at the hearing of this motion, presented new evidence relating to his criminal prosecution that was not presented in his original action. I find that the Defendants would be unfairly prejudiced if the Plaintiff were allowed to relate his new §1983 and Malicious Prosecution claims back to his original complaint.

Additionally, even assuming that the Plaintiff's new claims do relate back to his original complaint, the majority of the Plaintiff's new claims are still time-barred based on the applicable statute of limitations periods discussed above.

II. The Plaintiff fails to provide evidence sufficient to constitute a cause of action for malicious prosecution.

In order for the Plaintiff to maintain an action for malicious prosecution, the Plaintiff must show: (1) the institution or continuation of original judicial civil or criminal proceedings, (2) by the Defendant, (3) termination of the proceeding in the Plaintiff's favor, (4) malice in instituting such proceedings, (5) want of probable cause, and (6) resulting injury or damage. Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607,608 (1965).

With many of the incidents complained of, the Plaintiff fails to meet the first and second element of his malicious prosecution claim because the Plaintiff's allegations do not involve "the institution of original judicial civil or criminal proceedings... by the Defendant," therefore; these actions against the Defendants should be dismissed. For example, the Plaintiff complains that he was detained in July 2009 and threatened with a kidnapping charge, but no actual charges were ever initiated by Defendant Dickson. (Amd. Compl. ¶ 15). The Plaintiff also complains that Defendant Hebda asked a magistrate judge to deny the Plaintiff's bail, but this too was not an action instituted by Defendant Hebda. (Amd. Compl. ¶ 19). Additionally, in February 2012 the Plaintiff complains that Defendant Dickson made a false traffic report (Amd. Compl. ¶ 17); however, Officer Dickson's incident report states that no citations were issued to the Plaintiff or any other driver.

Next, the Plaintiff fails to establish that the proceedings against him were terminated in his favor. The fact that a charge is *nolle prossed* does not guarantee that a charge was dismissed in the Plaintiff's favor. See Law v. S. Carolina Dep't of Corr., 368 S.C. 424, 435–36, 629 S.E.2d 642, 648–49 (2006) (holding that where the reason for the *nolle prosse* was because the arresting agency chose to pursue charges in a federal court instead of state court, the reasoning did not imply the plaintiff's innocence). The evidence shows that two of the

Plaintiff's charges were *nolle prossed* because the state lacked sufficient evidence to prosecute simply based on the fact that the victim (the Plaintiff's ex-wife) was an uncooperative witness. This reasoning is insufficient to show the Plaintiff's innocence.

The Plaintiff also fails to show that the Defendants acted with malice or with lack of probable cause. The burden falls on the Plaintiff to show the absence of probable cause, and "the Defendant must be absolved from liability if plaintiff fails to show that the prosecution was instituted maliciously and without probable cause." Parrott, 246 S.C. at 322. Additionally, "although malice may be inferred from a want of probable cause, a want of probable cause cannot be inferred from any degree of malice." Parrott, 246 S.C. at 322; Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949). Probable cause is defined as:

> The [existence] of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.

Parrott, 246 S.C. at 321; Elletson v. Dixie Home Stores, 231 S.C. 565, 572, 99 S.E.2d 384, 387 (1957); Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949). In determining the existence of probable cause, "the facts must be regarded from the point of view of the prosecuting party; the question is not what the actual facts were, but what the prosecuting party honestly believed them to be." Brown v. Leonard, No. 2008-UP-039, 2008 WL 9832870, at *3 (S.C. Ct. App. Jan. 11, 2008), *citing to* Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 436, 629 S.E.2d 642, 649 (2006). "Although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one

conclusion." Id. Many of the facts of this case are substantially similar to those of Leonard. In Leonard, the South Carolina Court of Appeals held that an individual officer, Deputy Leonard, was not liable for malicious prosecution where the record reflected that he based his arrest of the plaintiff on statements made by witnesses on-site directly following an altercation. Leonard at *3. The court stated that "the magistrate ultimately found that probable cause existed upon issuance of the warrant. The existence of probable cause is apparent from the record." Id. The court explained that:

> While Brown asserts that Leonard did not see or observe Brown punching or assaulting anyone, this assertion does not entitle Brown to maintain a malicious prosecution action. The deputy provided statements under oath to the magistrate about facts which suggested that a crime had been committed. The magistrate found probable cause that a crime had been committed. On appeal, Brown does not challenge the finding of probable cause by the magistrate. Instead, the gravamen of Brown's claim is that the statements made were allegedly false. His inconsistent and conclusory allegation that no one provided any statements to the deputy is unsupported by the record and the record is lacking as to any basis upon which Brown acquired such personal knowledge.

Leonard, at *4.

Here, the Plaintiff fails to show any malice or want of probable cause by the Defendants in instituting proceedings against the Plaintiff. Like in Leonard, the evidence presented shows that the Defendants based all of their arrests of the Plaintiff on statements given by witnesses after the fact, and warrants were issued for each arrest. This is sufficient to show probable cause. The Plaintiff's argument is that the Defendants based their arrests on fabricated facts and statements. However, the record reflects that with each incident where the Plaintiff was arrested and charged, the Defendants had sufficient information to constitute probable cause. The Plaintiff alleges that in March 2010 Defendant Norberg

falsely arrested him for contacting his ex-wife (Amd. Compl. ¶¶ 20 – 21), but the record reflects that Defendant Norberg was informed by the Plaintiff's ex-wife that the Plaintiff was calling her directly and harassing her on numerous occasions in 2010. Furthermore, the Plaintiff alleges that around this same time Defendants falsely arrested him for possession of burglary tools, stalking, and burglary (Amd. Compl. ¶¶ 18 & 22), but the record reflects that the Defendants were informed by the Plaintiff's ex-wife that the Plaintiff had been by the ex-wife's residence on multiple occasions, had attempted to enter the residence using tools, and even broke into the ex-wife's residence on one occasion. With each of these arrests, a warrant was obtained, meaning that with each incident, the magistrate judge found that probable cause existed for the Plaintiff's arrest. Therefore, probable cause existed and this case falls squarely within the facts of Leonard and Law. The Plaintiff fails to meet his burden of showing a want of probable cause for any of the alleged incidents, entitling the Defendants to a grant of summary judgment on the Plaintiff's malicious prosecution claim.

Finally, to maintain an action for malicious prosecution, the Plaintiff must also show that he was damaged by the actions of the Defendants. The Plaintiff provides no evidence of any injury as a result of the alleged conduct of the Defendants. The Plaintiff's claim for malicious prosecution must fail as a matter of law.

III. The Plaintiff fails to provide evidence sufficient to constitute a cause of action for a violation under 42 U.S.C. § 1983.

In order for the Plaintiff to assert a claim under 42 U.S.C. § 1983, the Plaintiff has to show "that (1) the actions of the police officers deprived him of an actual constitutional right and (2) the right was clearly established at the time of the alleged violation." Camden v.

Hilton, 360 S.C. 164, 177, 600 S.E.2d 88, 94 (Ct. App. 2004). Furthermore, "the doctrine of qualified immunity shields police officers acting in their official capacity from suits for damages under 42 U.S.C § 1983, unless their actions violate clearly-established rights of which an objectively reasonable official would have known." Id. "A defense of qualified immunity may not be rebutted by evidence that the defendant's conduct was malicious or otherwise improperly motivated." Camden, 360 S.C. at 179-80, *citing to* Crawford- El v. Britton, 523 U.S. 574 (2004). Put another way, "qualified immunity now depends on the objective reasonableness of an officials' conduct, as measured by reference to clearly established law, not upon malice or other subjective factors," and "the only inquiry is whether a reasonable person could have believed his actions lawful at the time they were undertaken." Camden, 360 S.C. at 179-80, *citing to* Williams v. Treen, 671 F.2d 892, 896 (5th Cir.1982); Leibowitz v. United States Dept. of Justice, 729 F.Supp. 556, 561 (E.D.Mich.S. Div. 1989).

Here, the Defendants acted in their official capacity as a reasonable officer would have under similar circumstances, and their actions were lawful. The Defendants were acting on statements made by the Plaintiff's ex-wife on every occasion, as well as on information they obtained from their own investigation of the incidents. The evidence presented to the Defendants before every arrest indicated that an illegal act had been committed by the Plaintiff. The Defendants also obtained arrest warrants for each action. Therefore, the Defendants were at all times acting as a reasonable officer would, making lawful arrests of the Plaintiff. The Plaintiff fails to show that the Defendants violated any of his constitutional rights. The Plaintiff alleges that the Defendants acted with malice in

arresting the Plaintiff, but the court need not make this determination, as the analysis only involves the objective standard of reasonableness. All evidence before the court shows that the Defendants are entitled to qualified immunity, and the Plaintiff's § 1983 action must be dismissed.

IV. Pursuant to the South Carolina Tort Claims Act, the Plaintiff fails to state a claim upon which relief can be granted against the Defendants in their individual capacities.

The Plaintiff has failed to state a cause of action against the individual Defendants for which relief can be granted. The Plaintiff seeks a malicious prosecution claim against individual officers of the Bluffton Police Department. However, it has already been established in this action that the Defendants in this suit are subject to the provisions of the South Carolina Tort Claims Act. Judge Keesley's Order filed December 28, 2015. Section 15-78-20 of the South Carolina Tort Claims Act does not allow the Plaintiff to sue an individual employee directly for negligence in his official capacity. Therefore, all of the Plaintiff's allegations of malicious prosecution against the Defendants in their official capacities fails to state a claim as a matter of law.

V. The Defendants are entitled to discretionary immunity pursuant to the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act provides discretionary immunity for losses resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any service which is in the discretion or judgment of the governmental entity or employee." S.C. Code Ann. § 15-78-60(5). "Discretionary immunity is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using

accepted professional standards." Sabb v. S. Carolina State Univ., 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002). "Mere room for discretion on the part of the entity is not sufficient to invoke the discretionary immunity provision," and "the governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." Summer v. Carpenter, 328 S.C. 36, 46, 492 S.E.2d 55, 60 (1997).

I find that the Defendants were exercising discretionary immunity in each of the instances alleged by the Plaintiff. On every occasion complained of by the Plaintiff, the Defendants received information pertaining to the Plaintiff, made the determination that an intervention or arrest was necessary, and made a conscious choice to arrest, detain, question, or search the Plaintiff. The Defendants were at all times acting within their official capacities as employees of the Bluffton Police Department. Therefore, the Defendants are entitled to discretionary immunity, and summary judgment is proper.

VI. The Officers are state officials and may not be sued under 42 U.S.C. § 1983.

The Civil Rights Act, 42 U.S.C. § 1983, does not allow suits against States and their officials. "42 U.S.C. § 1983 provides a [forum] to remedy many deprivations of civil liberties, but it does not provide a [forum] for litigants who seek a remedy against a State for alleged deprivations of civil liberties." Will v. Mich. Dep't of State Police, 491 U.S. 58, 66 (1989); see Board of Trustees of the Univ. of Ala. V. Garrett, 531 U.S. 356 (2001) (holding that the Eleventh Amendment prohibits non-consenting states from being sued in federal or state court by private individuals).

Neither the State, nor a State official acting in an official capacity, are "persons" for purposes of actions under § 1983. "[A] suit against a state official in his or her official

capacity is not a suit against the official but rather is a suit against the official's office....We hold that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Id.* at 71; *see also Scheuer v. Rhodes*, 416 U.S. 232 (1974).

The Plaintiff did not sue any of these officers individually. In fact, the Plaintiff admitted at hearing that he was suing Officers Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales for their actions taken while serving as officers of the Bluffton Police Department. Therefore, a § 1983 action may not be brought against these officers and they are entitled to judgment as a matter of law.

Therefore as discussed above, it is:

ORDERED that the Defendants' motion for summary judgment is GRANTED.

IT IS SO ORDERED.

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Special Circuit Judge Marvin H. Dukes, III

Beaufort, South Carolina

May 9, 2017

Beaufort Common Pleas

Case Caption: Joseph Sun VS Town Of Bluffton , defendant, et al

Case Number: 2014CP0700943

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069